IN THE IOWA DISTRICT COURT FOR POLK COUNTY

GREATER COMMUNITY HOSPITAL, Petitioner, vs. PUBLIC EMPLOYMENT RELATIONS BOARD, Respondent, and GREATER COMMUNITY HOSPITAL EMPLOYEES ASSOCIATION, LOCAL 725 OF THE SERVICE EMPLOYEES INTERNATIONAL UNION, Intervenor.	AA 2393 RULING ON PETITION FOR JUDICIAL REVIEW 2/9/95

On November 4, 1994, Petitioner's Petition For Judicial Review came on for oral argument. The parties appeared through counsel of record. After reviewing the record and hearing arguments of the parties, the court enters the following ruling.

STATEMENT OF THE CASE

This is an action for judicial review of an action of the Public Employment Relations Board (Board) concluding that Petitioner's refusal to provide requested salary information to the Greater Community Hospital Employees Association (Association)

constituted the commission of a prohibited practice in violation of Iowa Code § 20.10(1), § 20.10(2)(a), (e), (f) and (g) (1993). On June 2, 1993, a hearing was held before an Administrative Law Judge. In a decision dated August 27, 1993, the ALJ concluded that the Hospital had not committed a prohibited practice. The ALJ's decision was reversed by the Board on May 12, 1994.

In their petition for judicial review, Petitioner contends the Board erred as a matter of law in concluding that the Petitioner was required to release certain salary information to the Association and that the requested data was not confidential or privileged. Petitioner also contends that the Board's decision is not supported by substantial evidence.

STANDARD OF REVIEW

On judicial review of an agency action, the district court functions in an appellate capacity to apply the standards of Iowa Code Section 17A.19(8)(1991). Iowa Planners Network v. Iowa State Commerce Commission, 373 N.W.2d 106,108 (Iowa 1983). The Court has no original authority to declare the rights of the parties. Office of Consumer Advocate v. Iowa State Commerce Commission, 432 N.W.2d 148,156 (Iowa 1988). Nearly all disputed in the field of administrative law are won or lost at the agency level. Iowa Illinois Gas and Electric Co. v. Iowa State Commerce Commission, 412 N.W.2d 600,604 (Iowa 1987). Judicial review of agency action is confined to corrections of errors of law. Farmers Coop Oil Ass'n v. Den Hartog, 475 N.W.2d 7,9 (Iowa App. 1991).

An agency action that is affected by an error of law or violative of constitutional or statutory provisions is subject to reversal under Iowa Code Section 17A.19(8)(a) and

(e). Northwestern Bell Telephone Company v. Iowa Utilities Board, 477 N.W.2d 678,682 (Iowa 1991). In deciding whether the agency made errors of law, the Court gives weight to the agency's construction of its statute but is not bound by it. Woodbine Community School District v. P.E.R.B., 316 N.W.2d 862,864 (Iowa 1982). It is the duty of the Court to determine matters of law including the interpretation of a statute. Casper v. Iowa Dep't of Job Service, 321 N.W.2d 6,10 (Iowa 1982). In deciding whether an agency action is in violation of a statutory provision, the court owes the agency only limited deference. The final decision concerning matters of law rests with the court. Cobb v. Employment Appeal Board, 506 N.W.2d 445,447 (Iowa 1993).

Iowa Code Section 17A.19(8)(f) provides in a contested case the court shall grant relief from an agency decision which is supported by substantial evidence made before the agency when the record is viewed as a whole. Neil v. John Deere Component Works, 490 N.W.2d 80,82 (Iowa App. 1992). Review is not de novo. Hussein v. Iowa Meat Packing Corp., 394 N.W.2d 340 (Iowa 1986). An agency's findings of fact are binding on the Court if supported by substantial evidence. Cobb, 506 N.W.2d at 447. Evidence is substantial to support an agency's decision when a reasonable person would find it adequate to reach a conclusion. Langley v. Employment Appeal Bd., 490 N.W.2d 300,302 (Iowa App. 1992). The question is not whether the evidence might support a different finding but whether the evidence supports the findings actually made. Neil, 490 N.W.2d at 82-83; Langley, 490 N.W.2d at 302. The fact that two inconsistent conclusions can be drawn from the evidence does not mean that one of those conclusions is unsupported by substantial evidence. Id.

In determining whether substantial evidence exists, the court is to consider all the

evidence together, including the body of evidence opposed to the agency's review. Burns v. Board of Nursing, supra, 495 N.W.2d 698,699 (Iowa 1993). In considering all the evidence, including that offered in opposition to the agency's finding, the court does not compromise the limitation on its scope of review. Because review is not de novo, the court must not reassess the weight to be accorded various items of evidence. Weight of evidence remains within the agency's exclusive domain.

This action arises out of a prohibited practice complaint brought by the Association pursuant to Iowa Code § 20.11, a provision of the Iowa Public Employment Relations Act. In the complaint, the Association alleges Greater Community Hospital (Hospital) violated Iowa Code § 20.1, § 20.2(a), (e), (f) and (g) by refusing to satisfy the Association's request for the names and salaries of the Hospital's administrative, managerial and supervisory personnel. The Board concluded the Hospital's refusal to provide the requested information constituted a prohibited practice.

Iowa Code § 20.10(1) imposes on both public employers and public employees the duty to "negotiate in good faith." The duty to negotiate in good faith imposes on a public employer the corresponding duty to furnish the employee's union relevant information so the union can fulfill its obligation to bargain on behalf of the employees it represents. See, Waterloo Education Association, PERB Case No. 921 (1977). On judicial review, the Hospital contends the Board erred as a matter of law in concluding that the requested data was relevant to the bargaining process.

1. The Board's Application Of The Correct Standard of Relevance

The Board has established a broad relevancy standard. Under the Board's standard, a public employer has a duty to timely provide information requested by an

employee organization if the information sought is (1) clearly specified; (2) may be relevant to the bargaining process; and (3) is not otherwise protected or privileged. See Southeast Polk Education Association, 78 PERB 1068, aff'd Polk Co. Dist. Ct. No. CE 9-4818 (1978). The Board has further stated the "may be relevant" standard is broad and requires the employer to furnish the information unless it "plainly appears irrelevant." See Washington Education Association, 80 PERB 1635 (1980).

The Hospital contends the Board erred as a matter of employment law in applying this standard of relevance. The Hospital argues the Iowa Public Relations Act (PERA) requires the Board to apply the standard of relevance established by the decisions of the National Labor Relations Board in deciding whether or not the requested information was relevant to the bargaining process. The Hospital asserts Iowa courts must interpret the PERA in accordance with the corresponding federal law, the Labor Management Relations Act. 29 U.S.C. 141 et. seq. (1994). The Hospital also contends that the Iowa Supreme Court has established "the principle of following the precedent of the National Labor Relations Board whenever an issue of interpretation arises." See, Petitioner's Brief, at 8.

Iowa's PERA is patterned after the Labor Management Relations Act, the corresponding federal legislation in this area. City of Davenport v. Pub. Emp. Rel. Bd., 264 N.W.2d 307,312 (Iowa 1978). However, the two statutory schemes are not identical. In construing the Iowa statute, the Iowa Supreme Court has stated "federal court decisions construing the federal statute are illuminatory and instructive on the meaning of our statute, although they are neither conclusive or compulsory (emphasis added)." City of Davenport v. Pub. Emp. Rel. Bd., 264 N.W.2d 307, 313 (Iowa 1978);

See also Mount Pleasant v. Pub. Emp. Rel. Bd., 343 N.W.2d 472,480 (Iowa 1984) ("federal law interpreting federal statute constitutes persuasive authority" (emphasis added)).

While federal decisions in this area are certainly illustrative and may be persuasive authority, the court can find no authority establishing the Board cannot apply a different standard of relevance than that followed by the NLRB. In fact, Iowa Code § 20.6(5) gives the Board the power to "adopt rules . . . as it may be necessary to carry out the provisions of this chapter." The Board clearly has the authority to establish it's own rules and procedure concerning what constitutes relevant evidence in a proceeding under the PERA, subject of course, to judicial review under the provisions of Iowa Code Chapter 17A. In reviewing the Board's standard of relevance, the court is mindful the Board is entitled to a reasonable range of informed discretion in interpretation of its statute and in the establishing of procedures. Office of Consumer Advocate v. Iowa State Commerce Commission, 419 N.W.2d 373,374 (Iowa 1988).

The Board has stated its rationale for its broad standard of relevance as follows:

> The spectrum of relevant information for public sector employee organizations in Iowa is much broader that would be normally considered relevant for private sector unions because the public sector employee organization in Iowa faces the prospect of preparing a fact-finding and/or arbitration presentation. An employee organization at the fact-finding or arbitration stage is required to justify the reasonableness of its proposals before a third party neutral who is unlikely to be familiar with the financial situation of the employer or the wage history of the bargaining unit employees.

Iowa Western Community College, PERB Case No. 702 (1976). The court concludes this rationale is reasonable and entitled to deference. Dubuque Comm. School Dist. v. Pub. Emp. Rel. Bd., 424 N.W.2d 427, 431 (Iowa 1988). The Board did not err as a

matter of law in applying a broad standard of relevance in this case.

2. The Board's Finding The Requested Data Relevant To The Proceeding

The Hospital next contends that even if the Board applied the correct standard of relevance, the Board's decision that the requested salary data was relevant is not supported by substantial evidence. In it's findings, the Board concluded the Association made the request for the contested salary data in order to prepare for forthcoming negotiations. Specifically, the Board found the Association wanted the information in order to compare administrative raises to those received by bargaining unit personnel and to determine the hospital's ability to pay as reflected by the wage rates and recent increases of administrators. The Board concluded:

> It certainly cannot be said that such information 'plainly appears irrelevant,' or that an arbitrator, who must, pursuant to § 20.22(9), consider certain criteria 'in addition to any other relevant factors (emphasis added), would find such information irrelevant.

Board Decision at 12.

The Hospital contends the Board wrongfully concluded the Hospital advanced an "inability to pay" argument thereby making the data relevant to bargainable issues. The requested data is relevant even in the absence of an "inability to pay" argument. Further, a review of the record reveals substantial evidence supporting the Board's conclusion that the Hospital claimed the Association's wage offer was not "economically viable"(Record, Vol. II at 23). The Board concluded that this "created an 'ability to pay' issue of sorts," making the requested data relevant to the bargaining process (Board Decision at 12). There is substantial evidence to support the Board's decision that the Hospital advanced an inability to pay argument. There is also substantial evidence to

support the Board's conclusion that the requested data was relevant to whether or not the Hospital was able to afford the Association's requested wage increase.

Even if this court were to conclude that the Hospital did not advance an inability to pay argument, the Court must still conclude that the requested data is relevant to the bargaining process. Diane Reid, Association President, testified at the hearing that reviewing the names and salaries of the Hospital non-bargaining unit personnel would allow the Association to accurately determine how any turnover in non-bargaining unit jobs affects the amount of money available for wage increases for bargaining unit employees. Reid also testified that accurate salary data was requested in order to compare the effect of the same percentage across the board wage increases on the actual dollars received by individual bargaining unit personnel. The Association contends that the same across the board wage increases for bargaining unit and non-bargaining unit personnel widens the existing wage disparity between the two groups. Clearly, the requested data was relevant in this case.

3. The Board's Order in Requiring Release of Data in Form Requested By Association

The Hospital contends the Board erred in requiring that the requested data be produced in the exact form requested by the Association. The Hospital offered to provide totals and percentages of raises given to its administrative, managerial and supervisory staff for the years 1988-1993 subject to verification by the Association's President and Representative. The Hospital conditioned this offer on the Association's agreement not to reveal it to any other persons. The Association rejected this offer. The Association contend they rejected the Hospital's offer because the breakdown of

salary by name and classification was necessary to determine the Hospital's ability to pay the Association's proposed salary increases. The Association refused to agree not to disclose this information to others because of the potential for future fact finding and arbitration. At the hearing, the Association stated the summarized data did not demonstrate the number of bargaining unit and non-bargaining unit employees in each category, whether there has been an increase or decrease in staffing, or replacements by lower salaried employees due to resignation or retirement. At the hearing, the Association's President, Diane Reid testified as follows:

> Q. Specifically what information did you want from the Hospital?
>
> A. Once again we were asking for the salaries for the management or administrative employees of the Hospitals--of the Hospital.
>
> Q. And Mrs. Reid, can you tell me why you wanted this particular information?
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> A. We needed this information in order to prepare for collective bargaining, in order to put together a reasonable proposal. We believe that we need the names and the positions as well as past salaries and current salaries so we can determine what the percentage increases were for each of those positions. The reason we feel we need the name is because sometimes if there's turnover in a position, then it is difficult to track if all you have is numbers, and even if you just have the position.
>
> We wanted to be able to compare the administrative increases with those increases given to the members of the bargaining unit, and also to be able to use that as a test of ability to pay on the part of the employee--employer.
>
> We also felt that it could be good evidence to use if we had to go to a neutral mediator, fact finder, or arbitrator; and additionally, since it is difficult to obtain comparable salaries for employees in this particular bargaining unit because it is difficult to get information from hospitals, it makes the increases given to the administrative people even more pertinent than it might in other situations or different type bargaining units.
>
> Additionally, there also is the concept that even if it exactly the same

> percentages, if people are earning considerably higher salaries, then those percentages equal bigger dollar increases.

Record, Volume II, at 30-32.

After considering all of the evidence, the Board concluded:

> Here, although the Hospital offered to provide some information to the Association regarding general groupings of administrative employees and ranges of wage increases, we agree with the Association that this was insufficient. Likewise, we agree that the Hospital's offer to allow certain union officials access to the information requested, if they agreed to keep the information secret from other union negotiating team members and agreed not to use it in impasse proceedings, did not substantially meet the Association's request.

Board Decision, at 12.

The court concludes that the Board's decision is not affected by error of law and is supported by substantial evidence. The Association presented a credible and rationale explanation why the summarized data submitted by the Hospital did not meet the Association's request. The Board carefully weighed that rationale and concluded that the Association did in fact need the requested data, in the form requested, in order to prepare a collective bargaining proposal that fulfilled its obligation to bargain on behalf of the employees it represents. The Board's decision was a reasonable one.

4. The Board's Finding That The Requested Data Was Not Privileged

The Hospital contends the Board erred as a matter of law in requiring the release of the requested salary data because the requested data was privileged and confidential. The Hospital acknowledges it is generally subject to the provisions of the open records law ordinarily compelling disclosure of this information. Iowa Code Chapter 22. However, the Hospital argues Iowa Code § 347.13(15), dealing with county hospitals, constitutes an exception to the open records law protecting the names and

salaries of administrators from disclosure. Section 347.13(15) provides:

> There shall be published quarterly in each of the official newspapers of the county as selected by the board of supervisors pursuant to section 439.1 the schedule of bills allowed and there shall be published annually in such newspapers the schedule of salaries paid by job classification and category but not by listing names of individual employees. The names, addresses, salaries, and job classifications of all employees paid in whole or in part from a tax levy shall be a public record and open to inspection at reasonable times as designated by the board of trustees.

The Iowa Supreme Court has stated that the Iowa Open Records Act must be interpreted liberally in that the act establishes "a liberal policy of access from which departures are to be made only under discrete circumstances." City of Dubuque v. Telegraph Herald, Inc., 297 N.W.2d 523,526 (Iowa 1980); Head v. Colloton, 331 N.W.2d 870,874 (Iowa 1983). Exemptions to the act must be narrowly construed. Head v. Colloton, 331 N.W.2d 870,874 (Iowa 1983). Mere inconvenience or embarrassment which may result from the disclosure of a public record is an insufficient basis for the issuance of an injunction to prevent examination of a public record. City of Dubuque v. Telegraph Herald, Inc., 297 N.W.2d 523,528 (Iowa 1980).

After construing § 347.13(15) the Board concluded that the statute made a distinction between "salary" and "pay." It is undisputed that while the county hospital's employees' salaries are not paid from tax levies, proceeds from tax levies are used by the Hospital to pay employees social security taxes and to make contributions to their IPERS retirement program. Money from tax levies paid for social security and retirement frees other funds to be paid to employees in the form of salaries. The Board concluded the contributions made by the Hospital to the employee retirement system were a type of compensation or pay. The language of § 347.13(15) is clear, it requires

the disclosure of the "names, addresses, salaries, and job classifications of all employees paid in whole or in part from a tax levy. . ." These administrative employees are paid in part from a tax levy.

The Petitioner would have the court read the statute as to only require disclosure of the "names, addresses, salaries, and job classifications of all employees [whose salaries are] paid in whole or in part from a tax levy." This court will not read such words into the statute in that the language of the statute is clear on it's face. To do so, would limit the information subject to public access. This result is not permitted under the applicable rules of construction. See, City of Dubuque v. Telegraph Herald, Inc., 297 N.W.2d 523,526 (Iowa 1980); Head v. Colloton, 331 N.W.2d 870,874 (Iowa 1983). The Board properly construed the term "paid" broadly so as to include in the meaning of that term compensation made in the form of contributions to a retirement plan. Since information concerning the pay of administrative employees is a matter of public record, it is not confidential. Therefore, the Board did not err as a matter of law in concluding that the requested data should be produced.

RULING

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the decision of the agency is hereby affirmed.

Ordered the _____ day of February, 1995

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ARTHUR E. GAMBLE, JUDGE
FIFTH JUDICIAL DISTRICT OF IOWA